

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO
RICO, *et al.*

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**RESERVATION OF RIGHTS OF THE OFFICIAL COMMITTEE OF RETIRED
EMPLOYEES OF THE COMMONWEALTH OF PUERTO RICO REGARDING
THE REVISED PROPOSED ORDER AND JUDGMENT CONFIRMING
MODIFIED EIGHTH AMENDED TITLE III JOINT PLAN OF
ADJUSTMENT OF THE COMMONWEALTH OF PUERTO RICO, ET AL.**

¹ The Debtors in these jointly-administered PROMESA title III cases (these “**Title III Cases**”), along with each Debtor’s respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric and Power Authority (Bankruptcy Case No. 17 BK 4780) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (Bankruptcy Case No. 19 BK 5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

The Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “**Retiree Committee**”) respectfully files this reservation of rights (“**Reservation of Rights**”) regarding the *Revised Proposed Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [Dkt. 19188] (the “**Proposed Order**”). In support of the Reservation of Rights, the Retiree Committee respectfully states:

RESERVATION OF RIGHTS

1. In connection with the negotiation and development of the *Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* (as amended, modified, or supplemented, the “**Commonwealth Plan**”), the Financial Oversight and Management Board for Puerto Rico (the “**Oversight Board**”) and the Retiree Committee negotiated and entered into a Plan Support Agreement, dated June 7, 2019 [Dkt. 17628-6] (the “**Retiree Committee PSA**”). The Retiree Committee PSA provides in general terms for, among other things, the establishment under the prospective Commonwealth Plan of the following: (i) a pension reserve to provide financial support for the pension obligations of the Commonwealth of Puerto Rico (“**Commonwealth**”) under the so-called PayGo System created under Act 106 of 2017; (ii) independent management for the funds held in the pension reserve; and (iii) an independent entity to monitor, on behalf of Commonwealth retirees, the funding of and withdrawals from the pension reserve by the Commonwealth. *See, e.g.*, Section 3.04 and Exhibit A of the Retiree Committee PSA.

2. A separate Plan Support Agreement between the Oversight Board and the American Federation of State, County, and Municipal Employees (“**AFSCME**”), also dated June 7, 2019, includes substantially similar provisions.

3. In accordance with the Retiree Committee PSA, and specifically in furtherance of the provisions of the Retiree Committee PSA referenced in paragraph 1 above, the Oversight Board

and the Retiree Committee, in consultation with AFSCME and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), engaged in extensive negotiations to create a document entitled *Guidelines for the Governance and Administration of the Puerto Rico Plan of Adjustment Pension Reserve Trust and Monitoring of Plan of Adjustment Pension Benefits* (the “**Guidelines**”). The Guidelines provide, among other things, the basic terms for: (i) the creation and administration of the pension reserve (the “**Pension Reserve Trust**”), (ii) the creation and governance of a board of trustees to provide the independent and professional management contemplated under the Retiree Committee PSA (the “**Pension Reserve Board**”), and (iii) the creation and governance of an independent entity to monitor on behalf of retirees the funding of and withdrawals from the Pension Reserve Trust by the Commonwealth (the “**Pension Benefits Council**”).

4. Section 3.04 of the Retiree Committee PSA provides for the Guidelines to be deemed an exhibit to the Retiree Committee PSA and a Definitive Document incorporated into the Commonwealth Plan. Presumably, this would be achieved by the Oversight Board filing the Guidelines with the Court as a Plan Supplement document, thereby incorporating the Guidelines into the Plan. The Guidelines were substantially agreed upon by the FOMB and the Retiree Committee as of early to mid-October 2021. Among other things, the Guidelines contemplate the following to occur *as of the Effective Date of the Plan*: (a) the creation and appointment by the Retiree Committee, AFSCME, the Governor, and the FOMB of members to a Pension Benefits Council, and (b) the execution of a Deed of Public Trust by the Oversight Board on behalf of the Commonwealth creating the Pension Reserve Trust and adopting the terms of the Guidelines. Moreover, section 83.2 of the Plan contemplates funding of the Pension Reserve Trust on the Effective Date of the Plan, but the Plan itself does not provide for creation and governance of the

Pension Reserve Trust, the Pension Reserve Board, or the Pension Benefits Council. ***Thus, without the Guidelines, the Commonwealth Plan is inconsistent with the Retiree Committee PSA.***

5. The Oversight Board has not filed the Guidelines with the Court as contemplated by the Retiree Committee PSA. Neither the Plan Supplement [Dkt. 18470], identified and approved under the Proposed Order, nor the Amended Plan Supplement [Dkt. 19062] attach the Guidelines.

6. On November 4, 2021, Retiree Committee counsel emailed to Oversight Board counsel a revised Guidelines document, primarily reflecting changes to conform with the newly filed *Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [Dkt. 19053], which provided for no cuts to accrued pensions. To date, the Retiree Committee has received no response from the Oversight Board to the revised Guidelines document, and the Guidelines governing the creation and governance of the Pension Reserve Trust, the Pension Reserve Board, and the Pension Benefits Council have not been finalized and filed with the Court.¹

7. Accordingly, neither the Plan nor the Proposed Order currently recognizes and approves the Guidelines document and, thus, do not provide for the creation and governance of the Pension Reserve Trust, the Pension Reserve Board, and the Pension Benefits Council. As such, the Plan and Confirmation currently are not consistent with the Retiree Committee PSA.

8. The Retiree Committee certainly understands that the Oversight Board has been juggling a number of pressing matters in connection with the pending confirmation hearings. However, in light of the November 15, 2021 deadline to object to the Proposed Order, the Retiree

¹ Earlier today, Retiree Committee counsel and AAFAF counsel inquired with Oversight Board counsel regarding the status of the Guidelines and were told the matter was still being reviewed.

Committee files this Reservation of Rights to reserve its right to be heard by the Court on all matters addressed herein.

(Signature page follows.)

November 15, 2021

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By:

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Respectfully submitted,

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